

TERRENI

LAW FIRM, LLC

CHARLES L.A. TERRENI
ATTORNEY AT LAW

1508 LADY STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 771-7228
EMAIL CHARLES.TERRENI@TERRENILAW.COM
WWW.TERRENILAW.COM

June 8, 2021

The Honorable Jocelyn G. Boyd
Chief Clerk and Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

Re: Docket No. 2020-247-A. Public Service Commission Review of South Carolina Code of Regulations Chapter 103 Pursuant to S.C. Code Ann. Section 1-23-120(J)

Dear Ms. Boyd:

Thank you for the opportunity to comment in the Public Service Commission's quinquennial review of regulations pertaining to motor carriers. I make these suggestions as an attorney who frequently represents household goods movers before the Commission.

1. Eliminate notarized signatures on Class E applications.

S.C. Code Reg. 103-130 requires applicants to apply for a certificate using the forms furnished by the Commission. I suggest deleting the notarized signature requirements of page 8 (Safety Certification) and page 10 (agreement to e-service of orders). I am not aware of any other application at the Commission that requires notarized signatures. Eliminating the notary requirement would streamline the application process without compromising its integrity. The Commission can ensure an applicant's knowledge of and compliance with safety regulations by having the applicant adopt his application under oath at the hearing or by verification.

2. Adopt form orders.

The Commission should issue a form order for approval of a household goods mover's application. A form order could greatly expedite the application process and relieve the financial strain faced by many applicants as they wait for a final order to be issued. Applicants often must make payments on equipment and insurance and incur other business expenses during the interval between the Commission's vote to approve an application and issuing its order. As the Commission noted in Order No. 2020-732 (Docket No. 2020-246-A), the lag time is "a problem that deserves a solution." A uniform form order, which the Commission could modify to include special provisions if needed, is an efficient solution.

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3. Eliminate published notices.

The Commission should amend S.C. Code Reg. 103-132 to no longer require that notice of an application for a CPC&N is published in a newspaper of general circulation. Nor should the Commission require published notices of requests to change rates under S.C. Code Reg. 103-193. Publishing notices in newspapers has become expensive. In the past twelve months, household goods movers represented by my firm have incurred between \$177 for a Class E application and \$397 for an application to amend a tariff.

A published notice's usefulness is doubtful. I am not aware of anyone intervening in a household goods mover's case in the past fifteen years. The notice regulations were put in effect before the internet but fewer people are now perusing legal notices than ever. Anyone sufficiently interested in motor carrier applications is savvy enough to monitor the Commission's Docket Management System.

Also, S.C. Code § 58-23-300 does not require notice of hearing for Class E applicants as it does for Class A, B, and D applicants. So, there is no statutory basis to maintain the requirements of published notices in Class E applications.

I suggest the following revision:

Public notice will be given when any application for a Certificate of PC&N or FWA or to amend a Certificate of PC&N or FWA has been filed with the Commission, except for applications seeking a Class C Certificate of PC&N. Such notice must be ~~published in newspapers of general coverage in the affected territory, must be in the form prescribed by the Commission, and must be published at the applicant's expense given on the Commission's website. All publication requirements must be complied with and affidavits of publication must be returned to the Commission's offices prior to a hearing date being set.~~ If required, a hearing is set, and all parties of record will be notified of the hearing date, time, and place. An applicant seeking a Class C Certificate to operate vehicles will not be required to publish a notice of filing.

S.C. Code Reg. 103-132 (proposed)

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4. The Commission should presume the need for more competition among household goods movers.

The Commission should recognize the benefits of competition in the marketplace and adopt a rebuttable presumption that the public convenience and necessity would be served by qualified applicants. The Commission should therefore amend S.C Code Reg. 103-133 to eliminate the requirement that an applicant show the public convenience and necessity are not already served by an authorized service. This requirement, seldom if ever enforced in modern times, is contrary to the public interest and constitutionally suspect.¹

The United States Supreme Court has found that certificate of need restrictions on entry into the marketplace based on necessity violate the Fourteenth Amendment's due process clause. For example, the Supreme Court ruled that a license to operate an ice company could not be denied because the Oklahoma Corporations Commission decided the state had no need for another ice company. New State Ice Co. v. Liebmann, 285 U.S. 262, 52 S. Ct. 371 (1932). While the Court acknowledged that necessity could be a valid licensing condition under some circumstances, it found no justification for restricting entry into the ice business:

There is nothing in the product that we can perceive on which to rest a distinction, in respect of this attempted control, from other products in common use which enter into free competition, subject, of course, to reasonable regulations prescribed for the protection of the public and applied with appropriate impartiality.

New State Ice Co. v. Liebmann, 285 U.S. at 279.

The constitutionality of the necessity requirement S.C. Code Ann. § 58-23-330 and S.C. Code Reg. 102-133 has not been tested, but it is doubtful that it serves a legitimate state interest. For instance, the South Carolina Supreme Court has ruled a statute limiting the number of liquor licenses held by a retailer was unconstitutional. Retail Servs. & Sys. v. S.C. Dep't of Revenue, 419 S.C. 469, 799 S.E.2d 665 (2017). In its ruling, the Court observed:

¹ In 1990, the South Carolina Supreme Court held that the mere testimony of an applicant's potential competitors that they were adequately serving the market was insufficient ground for the Commission to deny an application. Welch Moving & Storage Co. v. Public Service Com., 301 S.C. 259, 391 S.E.2d 556 (1991). The ruling made it much harder to challenge applications on the basis that the public convenience and necessity are already served.

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counsel for Respondents repeatedly stated to this Court during oral arguments that the only justification for these provisions is that they support small businesses. The record does not contain any evidence of the alleged safety concerns incumbent in regulating liquor sales in this way. Without any other supportable police power justification present, economic protectionism for a certain class of retailers is not a constitutionally sound basis for regulating liquor sales.

Retail Servs. & Sys. v. S.C. Dep't of Revenue, 419 S.C. at 474.

Given the deference historically afforded the state's regulation of liquor sales, this decision does not bode well for the constitutionality of restricting entry for economic reasons into the household goods market. The Commission can avoid this constitutional hazard by adopting a presumption that there is a need for more qualified carriers. This presumption would be consistent with the business-friendly ethos of our state and avoid a constitutional challenge.

I submit the following language for the Commission's consideration:

1. PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. ~~The public convenience and necessity criterion must be shown by the use of shipper witnesses, if the applicant applies for authority for more than three contiguous counties. If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The Commission will presume that entry of qualified carries in the market place benefits the public interest, unless presented with substantial evidence to the contrary.~~ The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:
S.C. Code Reg. 103-133.1 (*proposed*).

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If the Commission keeps the requirement that an applicant must demonstrate that the public convenience and necessity are not being met by an existing authorized service, it should allow the applicant to do so by citing market statistics instead of requiring a shipper witness.

5. Hearing examiners, or waiver of a hearing, could expedite the application process.

Hearings are optional under S.C. Code Reg. 103-134, but they are always held for Class E applicants even though virtually all applications are unopposed. The process could be expedited if hearing examiners conducted the hearings. The Commission could even consider waiving the hearing under certain circumstances. The Commission routinely grants applications for taxis, limousines, charter buses, and non-emergency vehicles, without a hearing, and there do not seem to be any adverse consequences.

6. Permit an electronic bill of lading.

S.C. Code Regs. 103-159 requires shippers to issue bills of lading. The Commission should clarify that a bill of lading may be issued on paper or by electronic means. The regulation does not specify the medium for a bill of lading, but current practice is to request its waiver for permission to use an electronic bill of lading.

7. Allow commonly used industry forms as proof of insurance.

S.C. Code Regs. 103-171 and 103-174, regarding proof of insurance should be amended to allow the submission of commonly used "Accord" forms as evidence of coverage. Many carriers issue Accord forms to their applicants, resulting in delay of their certificates being issued by ORS. South Carolina Code Regs. 103-178 requiring submission of certificates to ORS in triplicate should be deleted.

8. Allow carriers to give binding estimates.

S.C. Code Reg. 103-190 should be amended to allow a household goods carrier to offer a binding estimate, as proposed by Rudy Ru's Moving Crew, LLC in Docket No. 2020-204-T. When it voted to deny Rudy Ru's proposal, the Commission noted that the adoption of a binding estimate may be appropriate for consideration in a generic proceeding. Directive, February 10, 2021. This regulatory review is an appropriate vehicle for considering the proposal. S.C. Code Regs. 103-198, prohibiting variations in charges should also be repealed to promote price competition among carriers.

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9. Increase insurance requirements for passenger carriers.

S.C. Code Reg, 103-172 should be amended to increase the schedule of minimum limits for insurance policies and surety bonds. The minimum amount of \$25,000 of liability coverage per person and \$50,000 per occurrence is inadequate for a vehicle that may carry as many as 15 passengers. The rising cost of healthcare has made \$25,000 an inappropriate amount of coverage for someone that is injured in a motor vehicle accident. Furthermore, the Commission should require underinsured motor coverage for passenger carriers.

10. Requiring driving records and criminal background checks from applicants may not achieve the desired effect.

On April 14, 2021, Commissioner Carolee Williams requested the Commission should consider promulgating a new regulation to require that applicants for Class E Certificates provide driving records and criminal background checks with their applications. The sentiment behind Commissioner Williams' request is commendable. Everyone agrees that the safety of customers and their property is important. However, the effectiveness of such a requirement is not clear. Requiring a witness, or even the owners of an applicant, to provide driving records or criminal background checks will increase applicants' expenses but may not ultimately safeguard customers and their property.

Most applicants for Class E Certificates are corporate entities, either limited liability companies or corporations. The applicant's witness may be the sole owner of the entity or an employee. However, the witness is not necessarily the only person who will be driving a vehicle or handling household goods. The witness may not drive a vehicle at all. Drivers may change from month to month. The same is true of criminal background checks. The applicant's witness is seldom the only employee handling household goods. Some household goods movers conduct criminal background checks on all of their employees, but many do not.

If the Commission decides to promulgate a regulation requiring a criminal background check, it should carefully consider the extent of information required. SLED offers a South Carolina criminal background check inexpensively, but a nationwide background checks are expensive and vary in quality. Disqualifying offenses should also be clearly delineated. The EEOC has also cautioned employers not to use a background check policy that excludes people with criminal records if the policy has a disparate impact on individuals of a particular race,

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national origin, or another protected characteristic, and the exclusion is not job related or consistent with business necessity.²

Whatever the requirement, it should be imposed on all motor carriers, not just household goods movers.

Thank you for the opportunity to provide these comments.

With best wishes, I am,

Sincerely yours,

s/ Charlie Terreni

Charles L.A. Terreni

² “Background Checks: What Employers Need to Know”
<https://www.eeoc.gov/laws/guidance/background-checks-what-employers-need-know>